IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6935 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

K.C. MEHTA - Petitioner(s)
Versus
STATE OF GUAJRAT THR' PRINCIPAL SECRETARY & 4 - Respondent(s)

==========

Appearance :

MR PARESH UPADHYAY for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 2,4 - 5.
MR SK PATEL for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 25/08/2006

ORAL JUDGMENT

1. In the present petition, a retired Government officer has challenged the order of penalty dated 4th

December 2004 by which cut in the monthly pension of the petitioner to the extent of Rs.1,000/- for a period of one year has been imposed by the Government.

2. There is checkered history to this litigation. It will be necessary to take into account the facts required to decide the issues arising in this petition.

2.1 The petitioner was working in the Government service as Class-I officer. The petitioner retired from Government service on superannuation with effect from 30.11.97. Before his retirement, however, a chargesheet had been issued against the petitioner on 9.5.94. The main allegation made against the petitioner in the said chargesheet was that the petitioner had committed irregularities in granting price rise for supply of certain drugs to a Baroda based pharmaceutical Company, viz. Alembic Chemicals. The said Company had agreed to supply to the Government certain essential drugs for a total cost of Rs.12,75,000/- in the year 1988.

Subsequently, however, the petitioner had ensured that the said Company received an additional amount of Rs.6,62,000/- for the same drugs for the same quantity. It was stated, inter alia, in the said chargesheet that though the price rise was agreed to by a Committee called Medical Stores Purchase Committee (MSPC for short), the petitioner had misled the said Committee by withholding a communication of the State Government dated 1.6.88 by which such price rise was not agreed to. It is further alleged against the petitioner that in October and November 1997, the said pharmaceutical company had agreed to supply to the Government certain quantity of drugs at an agreed rate. The petitioner had written a letter to the State Government on 2.5.88 seeking permission to give price rise to the said Company. The Government, however, refused to grant such a permission by its communication dated 1.6.88. The petitioner, however, by withholding the said communication of the Government from the MSPC ensured that the said pharmaceutical company received price rise which resulted into loss to the Government to the tune of Rs.6,62,000/-.

2.2 The petitioner filed his detailed reply denying his involvement in the incident and pleaded not guilty.

2.3 It appears that before his retirement at one stage, the Government accepting the defence of the petitioner decided to drop the charges. In fact, a formal order in this regard was also passed on 30th June 1997. In the said order, the Disciplinary Authority on the basis of the defence statement of the petitioner came to the conclusion that the price rise in favour of the said company was necessary and if such a price rise was not granted, there would have been serious adverse impact on the family planning programme of the State Government. It was found that after every such operation of family planning, the injections being supplied by the Company were necessary. It was also found that price rise was agreed to by the MSPC and it cannot be termed as a decision of a single individual. It was found that MSPC had the authority to grant such a price rise. It was also stated in the said order

that the Government also in the Assembly had clarified that price rise was necessary.

2.4 Subsequently, however, by an order dated 30th November 1997, the Government recalled its earlier order of 30th June 1997 in purported exercise of review powers under rule 24 of the Gujarat Civil Service (Discipline and Appeal) Rules. In the order dated 30th November 1997, however, no reasons have been indicated why it was necessary for the Government to review its own decision. It was only stated in the order that the Government had decided upon reviewing its earlier order to continue the departmental inquiry against the petitioner pursuant to the chargesheet dated 9.5.94.

3. The petitioner challenged this order of the Government dated 30th November 1997 by filing a writ petition before this Court being Special Civil Application No.9004 of 1997. This petition, however, came to be rejected by the learned single Judge by the order dated 1.2.99. In the said order it was observed by the learned Judge that the impugned order

did not suffer from the vice of inherent lack of jurisdiction since the Government enjoys powers of review under rule 24 of the said Rules and that the same has been done within a period of five months. This order was not carried further by the petitioner and the same achieved finality.

3.1 The Government, therefore, proceeded further with the departmental inquiry. After completion of the oral inquiry, the Inquiry Officer submitted the report dated 20th January 2001. In his report, the Inquiry Officer found that the charges against the petitioner were not proved. The Disciplinary Authority, however, prima facie found that the charges against the petitioner were proved. A disagreement notice was, therefore, issued to the petitioner indicating the tentative decision of the Government and briefly stating the reasons in support thereof. This communication dated 17th August 2001 was served on the petitioner calling upon him to make his representation with the proposal of the Government.

3.2 The petitioner replied to the said communication of the Government by his letter dated 1.9.2001. Response of the petitioner was brief. He only stated that important documents were not supplied to him and that the Government should not disagree with the findings of the Inquiry Officer without following the principles of natural justice. In short, he requested the Government to drop the charges.

4. Eventually, the State Government passed the impugned order of penalty dated 4.12.2004 which has been challenged by the petitioner in this petition.

5. I have heard learned advocate Shri Upadhyay for the petitioner and learned AGP Shri Gori for the Government at considerable length. At the outset, it may be noted that though one of the grounds urged by the petitioner in the petition is that before passing the impugned order, the Government had consulted the Gujarat Public Service Commission and obtained its advise and acted upon the same without supplying the copy thereof to the petitioner; the

learned advocate for the petitioner does not press this ground in service since eventually the result of accepting of such a ground would only be to remand the proceedings before the Government to be carried further from the stage where the defect has been detected.

6. Learned advocate Shri Upadhyay for the petitioner has raised several contentions challenging the impugned order of penalty. Firstly, he contended that the alleged incident took place in the year 1988. Chargesheet for the same was issued for the first time on 9.5.94. Initially, the petitioner was exonerated by the order dated 30th June 1997. Only a day before the retirement of the petitioner, the Government reviewed the order and decided to continue the departmental proceedings. Even thereafter, there has been inordinate delay in completion of the proceedings. He pointed out that the inquiry took nearly four years to be completed. The Inquiry Officer submitted his report on 1.2.2001 holding that the charges against the petitioner were not proved. The Government took no action on the

said report for nearly 6 months. Only on 17.8.2001, the Government conveyed its tentative decision to disagree with the findings of the Inquiry Officer. The petitioner made his representation immediately on 1.9.2001, after which three more years passed before the Government passed the impugned order of penalty on 4.12.2004. It is thus the case of the petitioner that there has been gross delay in initiating and completion of the inquiry. The petitioner who is a retired Government servant has been made to suffer enormously on account of such a prolonged departmental proceedings for the alleged incident of the year 1988, and the petitioner long after his retirement is being punished by an order of penalty passed in December 2004.

6.1. It was next contended that the Government had by the order dated 30th June 1997 decided to drop the proceedings against the petitioner. The said order was a reasoned order and the same was passed by the Competent Authority. It was in terms stated in the said order that the decision to grant price rise was that of the Committee which had the authority to

do so and the petitioner cannot be blamed for the decision of the Committee. Justification for grant of price rise was also found acceptable. It was, therefore, contended that thereafter, the Government could not have reviewed such a decision, that too, without hearing the petitioner. It was submitted that the order of review is a non-speaking order.

6.2. It was next contended that there was malafide intention on the part of respondent No.5 Shri K.M.Kadia who at the relevant time was in a position to influence the decision making process of the Government. It was submitted that only on account of the active role played by said Shri Kadia that the inquiry against the petitioner was revived and decision adverse to the petitioner was taken. It was contended that when specific allegations of malafides were made by the petitioner in the petition, respondent No.5 though joined in his personal capacity has not filed affidavit in reply denying such allegations.

6.3. It was further contended that on merits also, the impugned order cannot be sustained. It was contended that the charges were not proved. There was insufficient material on record to drive home the charges. In this regard, it was further submitted that the petitioner had filed a detailed reply in response to the chargesheet. In the reply, the petitioner had outlined his defence. He had pointed out that the price rise was absolutely necessary and in any case, the same was a decision of the Committee.

6.4. It was further pointed out that the Inquiry Officer has given cogent reasons for coming to the conclusion that the charges against the petitioner were not proved. The attention of the Court was drawn to the contents of the report of the Inquiry Officer wherein he concluded that price rise was given pursuant to the decision of the MSPC for which the committee had necessary powers. The Inquiry Officer also observed that the proposal for price rise was placed before the Committee on more occasions than one. In granting the price rise,

there was no ill intention to favour the Company. The Inquiry Officer also noted that though it is true that the letter of the Government dated 1.6.88 was not placed before the Committee, there was no such intention of the Government borne out from the record. It was also contended that the Government itself had before the Legislative Assembly of the State stated that price rise was justified and imminent.

6.5 It was lastly contended that if at all the petitioner can be blamed for some procedural lapses, a retirement Government servant should not be penalised for such a procedural lapse if at all, that too nearly 16 years after the event.

6.6. In support of his contention, learned advocate Shri Upadhyay for the petitioner placed reliance on the following decisions :-

(1) Decision in the case of Express Newspapers Pvt. Ltd v. Union of India, AIR 1986 SC 872 was relied

upon to submit that uncontroverted allegations of malafides should be accepted. My attention was drawn to the observations made by the Hon'ble Supreme Court in para 115 and 118 of the judgment wherein the Hon'ble Supreme Court was pleased to place reliance on the allegations of malafides since despite sufficient particulars on record and despite ample time being available to the Government, no denial statement was filed. It was observed that fraud on power voids the order if it is not exercised bona fide for the end design.

(2) Reliance was placed on the decision in the case of P.V.Mahadevan v. M.D.Tamil Nadu Housing Board, (2005) 6 SCC 636, wherein the Hon'ble Supreme Court did not permit the Department to proceed further with the departmental proceedings after considerable period of time. It was, however, a case wherein the Hon'ble Supreme Court was of the opinion that permitting the Government to proceed further with the inquiry would result into mental agony and injustice to the officer concerned.

(3) Reliance was also placed on the decision in the case of M.V.Bulani v. Union of India, (2006) 5 SCC 88 wherein the Hon'ble Supreme Court found that the proceedings were initiated 6 years after the event and continued for 7 years thereafter and that therefore, initiation and continuance of the inquiry prejudiced the delinquent officer.

(4) Reliance was also placed on the decision of a Division Bench of this Court in the case of A.R.N.Setalvad v. State of Gujarat, 2006 (2) GLH 568 wherein the Division Bench of this Court in para 31 of the decision made certain observations in which it was provided that the Chief Secretary to the Government of Gujarat may impress upon the Auditors as well as the authorities taking decisions for initiating departmental inquiries against Government officers or employees the need to have proper perspective before making any decision especially when the allegations against the officer pertain to violation of procedural rules without any allegation of misappropriation, corruption or similar factual mala fides.

7. On the other hand, learned AGP Shri Gori made detailed submissions in support of the order of the Government. He submitted that charges were proved against the petitioner through a validly conducted departmental inquiry. The petitioner was a senior level Medical Officer and acted in a manner unbecoming of a Government servant. He had with oblique motive sided with the private supplier of the drugs to the Government and had ensured price rise in favour of the Company against the Government order.

7.1. The learned AGP further submitted that the petitioner had sought permission from the Government to grant price rise to the said company by his letter dated 2.4.88 and the Government had in terms rejected such a request by its communication dated 1.6.88. He submitted that once the Government refused the request for price rise, there was no further question of the Committee taking a decision contrary to the Government stand. The petitioner withheld the said letter from the Committee and misled the other

members of the Committee into granting price rise without authority. He further submitted that though there was some delay in conduct of the inquiry, the same was on account of the procedural requirements of following principles of natural justice. He drew my attention to the affidavit in reply dated 19th October, 2005 filed by one Shri J.C.Rathod along with which a detailed chart outlining the several stages through which the inquiry had passed had been produced. Placing reliance on the said dates, it was contended before this Court that delay in the present case cannot be held to be fatal.

7.2. It was further contended that the Government had ample power to review its earlier decision if facts so necessitated. He submitted that the order of review was challenged before this Court and the petition was rejected and the order of the learned single Judge was not carried further in appeal. In that view of the matter, according to the learned AGP, the petitioner cannot raise any grievance about the reopening of the departmental inquiry. It was also contended that the earlier decision of the

Government to drop the charges was without consultation with the Vigilance Commission. Vigilance Commission had, therefore, taken an objection to the said procedure being followed. The Government, therefore, had reviewed its own decision and decided to reopen the departmental inquiry against the petitioner.

7.3. It was also contended that the charges against the petitioner were extremely serious and when found to be proved, the petitioner cannot hope for a more lenient punishment.

8. Having heard the learned advocates appearing for the parties, this Court would like to first advert its attention to the manner in which the Government reviewed its own earlier decision and decided to reopen the inquiry proceedings pursuant to the chargesheet dated 9.5.94. To enable this Court to do so, it would be necessary to examine the exact nature of the order passed by the learned single Judge on 1.2.99 in Special Civil Application No.9004 of 1997. It may be recalled that the said petition was filed

by the petitioner challenging the order of review dated 30th November 1997. It may also be recalled that the learned AGP Shri Gori has strongly urged before this Court that petition challenging the review order having been once rejected by this Court, legality of the action of the Government reopening the departmental proceedings cannot be gone into in the present petition.

9. In the order dated 1.2.99, the learned single Judge of this Court made the following observations:

> "Mr. Panchal,the learned advocate, has raised several contentions . However, he is unable to establish that the impugned order has been made without jurisdiction. In view of Rule 24 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971,the Government is empowered to review its own order and in the instant case, it has done so within a period of five months. Hence,I am of the view that the impugned order does not suffer from the vice of inherent lack of jurisdiction. The said order,therefore, does not call for interference at this stage. Besides, Mr. Panchal admits that the petitioner has been sanctioned 100% provisional pension . However, he makes a grievance that no amount of gratuity has been paid to the petitioner though he has retired from the service more than a year ago.
>
> For the reasons stated hereinabove, the present petition is dismissed without prejudice to the rights and contentions of either of the parties. The petitioner shall file his reply,if any, within a period of fifteen days from today and the respondent-Government shall pay 50% of the amount of gratuity due and payable to the petitioner, within a period of one month from today. It is further directed that the respondent shall complete the inquiry as expeditiously as possible, and preferably within twelve months from today, provided the petitioner cooperates.
>
> Subject to the aforesaid directions, the petition is

dismissed in limine. Notice is discharged."

Following important aspects of the said order need to be noted. Firstly, the learned single Judge found that the order of review does not lack in inherent jurisdiction. Secondly, though the learned advocate for the petitioner had raised several contentions, the petition was rejected only on the ground that the order of review does not lack jurisdiction. The petition was, therefore, disposed of observing that the action does not call for interference at that stage. While disposing of the petition, the learned Judge observed that the same was being done without prejudice to the rights and contentions of either of the parties.

10. It can thus be seen that out of several contentions raised on behalf of the petitioner against the order of review, the learned single Judge considered only one question, that of lack of jurisdiction on the part of the Government. Finding that the Government does have jurisdiction, the learned Judge was pleased to reject the petition at that stage without deciding other contentions raised

by the petitioner and observing that the dismissal of the petition is without prejudice to the rights and contentions of either of the parties.

11. The intention of the learned Judge was, therefore, eminently clear. It was to ensure that the petitioner participates in the further proceedings of departmental inquiry since reopening of the inquiry was not found to be lacking in jurisdiction. The exact nature of the review order and legality thereof, however, was not tested and it was left open to be debated before the appropriate forum at a later stage. This is the only meaning this Court can draw from the above quoted portion of the decision of the learned Judge. At the cost of repetition, it may be noted that though several contentions were raised on behalf of the petitioner, learned Judge had not dealt with such contentions observing that the petition is dismissed without prejudice to the rights and contentions of either of the parties.

12. In above view of the matter, this Court is not precluded from examining the legality of the

order dated 30th November 1997 except for the question of jurisdiction of the Government to pass such an order. It is only this question which was decided by the learned Judge which achieved finality and no other contentions were taken into account and no decision thereon rendered.

13. It may be recalled that by the order dated 30th June 1997, the Government had, at one stage, dropped the proceedings against the petitioner by a speaking order. Detailed reasons in support of the said decision were also given. It is true that under rule 24 of the said Rules, the Government enjoys power to review its own decision. However, such a review cannot be based on *ipse dixit* of the Government nor can the same be without recording proper reasons. The order dated 30th November 1997 does not record any reason as to why the Government was prompted to review its earlier order and reopen the departmental inquiry against the petitioner. It only records that the Government took the decision into review and found it necessary to reopen the departmental proceedings. To my mind, such an order cannot stand

the test of legality. Additionally, I also find that the petitioner was not granted any hearing before passing the review order. The petitioner in whose favour an order of exoneration was passed by the Government, at least had a right to be heard before such an order was being set aside and the entire inquiry proceedings being reopened. On this ground also, review order cannot be sustained. The learned AGP Shri Gori has placed on record a communication dated 27.11.97 issued by the Vigilance Commission to the State Government objecting to the departmental proceedings being dropped against the petitioner. It may be true that the Vigilance Commission is set up to keep a watch on corrupt Government officials going scot-free, nevertheless there must be proper application of mind and proper conveyance of reasons why the Commission found it necessary that certain departmental proceedings should be reopened. In this regard, I have perused the communication dated 27th November 1997. The Vigilance Commission while indicating its displeasure about dropping of the proceedings against the petitioner stated that once a chargesheet has been issued, the Government cannot

decide to drop the proceedings against the petitioner on the basis of defence that the delinquent officer may offer. This appears to be the sole ground on which the Commission had based its objection. I find that such a ground is not sustainable. If the Disciplinary Authority or the Government issues chargesheet to a delinquent Government servant and the Government servant gives acceptable and plausible explanation in his defence statement, can it be said that at that stage, the charges cannot be dropped even if the Disciplinary Authority is clearly of the opinion that the delinquent officer is not guilty ? Is it necessary under the Rules to go through the entire gamut of holding the departmental inquiry even if the disciplinary authority at the very outset is of the opinion that the charges against the delinquent Government servant cannot be sustained ? Answer has to be in the negative and it is always open for the Government to consider the defence in its proper perspective and if found that the defence is plausible and that no useful purpose would be served in prolonging the departmental inquiry, the charges can as well be dropped for valid reasons to

be recorded in writing. On all these grounds, I find that the decision to reopen the inquiry against the petitioner cannot be upheld. I have, however, considered the entire material on record and also examined the nature of the order passed against the petitioner.

14. It may be noted that the thrust of the argument against the petitioner has all along been that he connived with the drug supplying company into securing price rise in favour of the said company. The allegation against the petitioner was that the items being supplied by the company were not canalised items and that therefore, despite increase in the price of the raw material declared by the Central Government, there cannot be any deviation in procurement price once the company had agreed to supply the same at a particular rate. In this regard, it was the specific case of the Government that the petitioner had written a letter dated 2.4.88 to the Government seeking permission to grant price rise. The Government had disagreed to such a proposal and conveyed to the petitioner by the

communication dated 1.6.88. Despite this communication and in fact holding back the communication of the Government from the Committee, the petitioner ensured price rise in favour of the company concerned.

15. In this regard, the Inquiry Officer found that the petitioner has not committed any misconduct. This was so stated in the inquiry report also. It was found that the price rise given to the Company was quite necessary. The Government, however, desired to disagree with the inquiry officer's report. In its communication dated 17th August 2001, the Government conveyed to the petitioner its reasons for such tentative disagreement and called upon the petitioner to make his submissions.

16. In this respect, certain aspects of the matter called for closer scrutiny. Firstly, what exactly was the communication between the petitioner and the Government on 2nd April 1988 and 1st June 1988 would be important to take note of. Second

aspect of the matter is whether the Committee had independently any power to grant price rise. Third aspect of the mater is whether the lapse on the part of the petitioner can be categorized as procedural lapse or whether the misdeeds were of serious nature as is sought to be made out by the respondents. Lastly, the question is whether the price rise was essential to ensure continuous supply of essential drugs.

17. On 2.4.88, the petitioner made a proposal to the Government for grant of price rise to the concerned company. In the said proposal, it was stated, inter alia, that as per clause 24 of the tender agreement, it is ordinarily not possible to grant price rise. The petitioner, however, stated that in majority of the items (raw materials) there was increase in prices. Therefore, if the Government does not grant permission to increase the price of procurement of drugs, it would be very difficult to procure the drugs in coming years. This would lead to a very difficult situation and the Government would end up taking steps against large

number of companies. However, clause 56 in the appendix to the tender notice was pointed out wherein it was provided that the Director, CMSO has a right to relax any of terms and conditions contained in the tender notice. The petitioner, therefore, proposed to the Government that though the items in question were not canalised items, it is imminent that price rise is agreed to. The petitioner, therefore, proposed to the Government that upon receiving the proposal and necessary documents in this regard, the Director may be given permission to take decision with respect to price rise in terms of clause 56. It was this proposal of the petitioner which came to be turned down vide communication dated 1st June 1988. It was stated that the proposal of 2.4.88 cannot be accepted and the present procedure may be continued to be followed.

18. Both sides have sought to place different interpretations to this correspondence. On behalf of the petitioner, it is sought to be suggested that the petitioner only sought permission from the Government to consider price rise as Director to cut-short the

procedure without taking a decision through the Committee. It was this proposal which the Government did not agree to. Independently of this correspondence, the Committee always enjoyed the power to consider price rise which was eventually done and that therefore, there was no necessity to place the letter of the Government dated 1.6.88 before the Committee. On the other hand, learned AGP Shri Gori strenuously urged before me that the petitioner requested to agree to the price rise in favour of the drug company by his letter dated 2.4.88. It was this request of the petitioner which the Government turned down vide its communication dated 1.6.88. When the Government had not granted permission to the petitioner to grant price rise, it was not open for the Committee to consider such a question. In any case, the petitioner ought to have placed the said letter before the Committee. The petitioner not having done so exhibits his *mens rea.*

19. Having carefully perused the contents of the said two letters, I find that the proposal of the petitioner was to give power of considering the

question of price rise to the Director. Independently of such authorization by the Government, the Committee appears to be enjoying certain powers of granting price rise. It is in this background that the observations of the Government in the letter dated 1.6.88 need to be appreciated. The Government in terms conveyed to the petitioner that the present procedure may continue to be followed. The present procedure can have reference only to the procedure of placing the entire issue before the Committee for taking a decision. I am prompted to take this view after perusal of the material on record. In the chargesheet itself, the Government has not stated that the Committee lacked inherent jurisdiction to decide the question of price rise. Had there been any such case, the Government would have come out with the same in the chargesheet itself. Therefore, independently of the correspondence between the Government and the petitioner, at least the Committee had the power to consider the question of price rise. Secondly, in the decision to disagree with the report of the Inquiry Officer also, the Government has clearly

stated that it was necessary that the Committee takes a decision after considering the order of the Government dated 1.6.88. This in turn suggests that even the stand of the Government is not that the Committee had no power to undertake the exercise of granting price rise. The main stand of the Government, however, is that the same could not have been done once the Government had turned down such a request. Learned AGP Shri Gori has also made available the file notings of the Government leading to the said communication dated 1.6.88. From the notings, the intention of the Government may emerge to disagree with the proposal for price rise, such notings obviously were not conveyed to the petitioner and the petitioner cannot be blamed for not adhering to the order of the Government in the background of the file notings. It would, therefore, appear that the petitioner had requested the Government to grant authority to consider the question of price rise being the Director. The Government had turned down such a request and insisted that normal procedure be followed. In this respect, therefore, the action on the part of the petitioner in not placing the said

correspondence before the Committee though may be improper cannot be termed as an illegal exercise or one which would establish the guilt of connivance with the drug company.

20. There is yet another aspect of the matter which cannot be lost sight of. In the communication dated 17th August 2001 by which the Government desired to disagree with the report of the Inquiry Officer, the Government itself has in clear terms stated that though the stand of the petitioner that there was no necessity to place the communication of the Government dated 1.6.88 before the Committee is not proper, however, his decision was based on the circumstances arising. There was no ill intention on his part in giving price rise nor there was any intention on his part to ensure undue in favour to the company. If this was the stand of the Government, I do not find that any penal order could have been passed against the Government servant in the facts of the present case. Even if there was some lapse on the part of the petitioner in ensuring price rise for the Company, if the Government itself

found that the decision was valid and justified on account of the circumstances prevailing at the relevant time and that there was no ill intention on the part of the petitioner in granting such price rise or to unduly favour the Company, I fail to understand how any order can be passed against the petitioner. The incident is of 1988. Inquiry came to be initiated by issuing chargesheet in the year 1994. After once dropping the charges, the said decision was reviewed by the Government on the eve of the retirement of the petitioner. After retirement in November 1997, final order came to be passed in the year 2004. Surely for minor procedural lapse when the Government itself was of the opinion that there was no ill intention on the part of the petitioner to unduly favour of the Company and that price rise was justified on the basis of the circumstances prevailing, no order of penalty could have been passed against the petitioner.

21. In the result, the impugned order of penalty is quashed. The petition is allowed accordingly. Rule is made absolute accordingly with no order as to

costs.

(Akil Kureshi, J.)

(vjn)